IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7684 of 2007()

CRIME NO.7684/2007 OF KONNI POLICE STATION
....

PETITIONER 2ND ACCUSED :

HAREESH, S/O.LATE GANGADHARAN,
KESAVASADANAM, MLANTHADOM, VAKAYAR.

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENT/ COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KONNI POLICE STATION
(CRIME NO. 585 OF 2007) REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7684 OF 2007

Dated this the 13th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations for offences punishable, inter alia, under Sec.3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. All other offences are bailable.

2. In view of Sec.18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, anticipatory bail cannot be granted by this Court in a case where the offence under Sec.3 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act is alleged against the petitioner. The learned counsel for the petitioner submits that if the allegations do not at all attract the offence punishable under Sec.3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act and the section has been erroneously shown in the F.I.R.

that by itself will not take away the jurisdiction of this Court to grant anticipatory bail under Sec.438 of the Cr.P.C. That contention is well accepted. But I am unable to agree that the allegations raised in the present crime do not attract the offence under Sec.3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act at all.

3. It is for the petitioner to appear before learned Magistrate and seek regular bail. It is by now trite and this Court had repeated the said proposition in the decisions reported in **Ali v. State of Kerala (**2000 (2) K.L.T. 280); **Shanu v. State of Kerala** (2000 (3) K.L.T. 452); **Krishnakumar v. State of Kerala** (2005 (1) K.L.D. (Cri) 42 and **P.P. Kader v. State of Kerala** (2005 (1) K.L.D. (Cri) 250) that notwithstanding the fact that the offences are triable exclusively by a Court of Session, the Magistrate is obliged to consider the application for bail under Sec.437 Cr.P.C. on merits. In the facts and circumstances of this case, I am satisfied that the interests of justice will be served eminently by issue of a direction to the learned Magistrate to consider the application for bail to be filed by the petitioner on his surrender before the learned Magistrate – of course, after giving sufficient prior notice to the Prosecutor-

in- charge expeditiously – on the date of surrender itself and in the light of the decisions referred above.

4. This bail application is, in these circumstances, dismissed with the above specific observations.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge